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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/582,292 | 06/23/2000 | VINCENT LE GUEN | Q59354 | 1515 |

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02/24/2003

SUGHRUE MION ZINN
MACPEAK & SEAS
2100 PENNSYLVANIA AVENUE NW
WASHINGTON, DC 20037-3213

EXAMINER

NGO, LIEN M

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 02/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/582,292

Applicant(s)

LE GUEN, VINCENT

Examiner

LIEN TM NGO

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 December 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-3, and 5-7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, line 1, "slightly cylindrical" is indefinite because it cannot be determined what it means. A thing is either cylindrical or it is not. In line 2, "extends such wall" is indefinite because it cannot be determined what it means.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Jakobsen (4,721,223).

In regard to claim 1, Jakobsen discloses, in figs. 5 and 13, a container having a cylindrical wall 10, and a petaloid-type base. Said base comprises a convex wall and outgrowth member

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(foot supports) The convex wall comprises a hemispherical area and a peripheral marginal area having a curve with an inflection, wherein the inflection is a change in curvature from a concave curve to a convex curve. (see fig. 13). The base wall and the marginal area as well as the cylindrical wall and the peripheral area are linked in an almost tangential manner.

In regard to claim 2 and 3, the outgrowth members are linked with the hemispherical wall in a roughly tangentially member in immediate proximity (see figs. 1-5)

In regard to claim 4, it is clear from fig. 4 that the curve radius of the hemispherical wall is between 80%-120% of the radius of the cylindrical wall.

In regard to claims 5-7, the container further comprises a clearance, and a support surface. The top end of the members is linked with the cylindrical wall in an almost tangential member (see figs. 1-5 and 13). The container further comprises a shoulder 2, a collar and a neck 1 (see fig. 12).

5. Claims 1, 5, 6 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Motill (4,368,825).

In regard to claim 1, Motill discloses, in figs. 3, 7, 9, and see the attachment, a container having a cylindrical wall 3, and a petaloid -type base (A-A). Said base comprises a convex wall (C-C) and outgrowth member 7. The convex wall comprises a hemispherical area (C-C) and a peripheral marginal area (A-C) having a curve (AB; BC) with an inflection B, and wherein the inflection is a change in curvature from a concave curve to a convex curve. The base wall and the marginal area as well as the cylindrical wall and the peripheral area are linked in an almost tangential manner (see point C and A).

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In regard to claims 5, 6 and 7, the container further comprises a clearance (under point D) , and a support surface (foot 7). The top end of the members is linked with the cylindrical wall in an almost tangential member (at point A). The container further comprises a shoulder 2, a collar and a neck 1.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jakobsen. To the degree it can be argued that Jakobsen does not disclose the curve radius of the hemispherical wall being between 80%- 120% of the radius of the cylindrical wall, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the curve radius of the hemispherical wall of Jakobsen having a range as claimed , since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

Response to Arguments

8. Applicant's arguments with respect to claims 1-7 have been considered but are moot in view of the new ground(s) of rejection.

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Applicant argues that Motill does not disclose that the base wall is hemispherical, except for a peripheral marginal area with the cylindrical wall. However, that is not found convincing because examiner submits that Motill does disclose the base wall (C-C) is hemispherical, except for a peripheral marginal area (A-C). The base wall (C-C) is hemispherical because it is substantially a half of a spherical body, and area (A-C) is positioned at the peripheral marginal of the base wall.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien Ngo whose telephone number is (703) 305-0294. The examiner can normally be reached Monday through Friday from 8:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful. The examiner's supervisor, Lee Young, can be reached at (703)308-2572. The Group FAX number is (703) 305-3579.

Any inquiry of a general nature or relating to the status of the application should be directed to the Group receptionist at (703) 308-1148.



Lien Ngo

February 12, 2003


Stephen P. Garbe
Primary Examiner